

MAR 31 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) PR Docket No. 93-35
)
Amendment of the Commission's Rules To) RM-7986
Provide Channel Exclusivity To Qualified)
Private Paging Systems At 929-930 MHz)

To: The Commission

COMMENTS OF AMERICAN DIGITAL COMMUNICATIONS, INC.

American Digital Communications, Inc. ("ADC"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules and the Commission's Public Notice, Report No. 1999 (Erratum), released March 11, 1994, 59 Fed.Reg. 12327 (March 16, 1994), hereby submits its Comments upon the Petition for Reconsideration ("Petition") filed December 27, 1993 by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP"). ADC's Comments herein address only one portion of the APCP Petition -- APCP's proposal to provide statewide exclusivity for regional exclusive licensees, rather than the current rule which extends exclusivity to a 70- mile radius around a regional licensee's transmitters.

ADC does not oppose APCP's proposal *per se*. However, ADC and other companies that have been making their business plans based upon the current rules should not be penalized for having done so. Notice of the APCP Petition was published in the Federal Register on March 16, 1994. Therefore, the statewide exclusivity proposed by APCP should not be applicable to local PCP licensees whose

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applications (including application for local exclusivity) were received by NABER for coordination within a reasonable period after March 16, 1994. ADC would be satisfied with a deadline of the date of these Comments, i.e., March 31, 1994. That is sufficient notice for actual 929 MHz PCP operators who had actual business plans prior to March 16, 1994. That is sufficient notice for actual 929 MHz PCP operators who had actual business plans prior to March 16, 1994 and would be adversely affected.

In ADC's case, ADC is acquiring an existing grandfathered, local 929 MHz PCP system which lacked, by one transmitter, eligibility for local exclusivity, and ADC has filed at NABER an application for the additional transmitter accompanied by a request for local exclusivity. Currently, to ADC's knowledge, there is no nationwide co-channel licensee and no other co-channel licensee or applicant within 70 miles of any of the ADC system transmitters, and so ADC is entitled to local exclusivity. However, it is likely that somewhere there is an in-state co-channel transmitter eligible for regional exclusivity. If APCP's proposal is adopted and made retroactive to October 14, 1993, ADC would be denied its local exclusivity, and would lose the ability to fill in gaps or modify its local system. It would even be forced to curtail service if congestion necessitated by sharing caused service to deteriorate.¹

ADC does not wish to create an opening for speculators to file applications and frustrate existing licensees, hence ADC's proposed

¹ ADC's assignor has been operating the 929 MHz PCP system on a *de facto* exclusive basis ever since construction, since there have been no co-channel licensees anywhere within 70 miles.

March 31, 1994 deadline. (Any current operator reading the APCP Petition has now had sufficient time to anticipate the grant of APCP's statewide exclusivity request and act accordingly.) However, at least in instances such as ADC's, where a local 929 MHz system was in operation prior to October 14, 1993 and where under current rules the local licensee could have believed it had additional time to expand by one more base station without losing its opportunity to maintain its local exclusivity, retroactive implementation of statewide exclusivity would be arbitrary and capricious.

Accordingly, ADC requests that if APCP's proposal for statewide exclusivity is adopted by the Commission, that such statewide exclusivity be deemed secondary to (i.e., later-filed than) applications for base stations or local exclusivity received by NABER on or before March 31, 1994, at least where a portion of the involved local system was constructed and in operation before October 14, 1993.

Respectfully submitted,

**AMERICAN DIGITAL COMMUNICATIONS,
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By:



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March 31, 1994
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Certificate of Service

I, JacLyn Freeman, a legal secretary with Brown Nietert & Kaufman, Chartered, do hereby certify that I have this 31st day of March, 1994, caused to be mailed, first class, postage prepaid the foregoing "Comments of American Digital Communications, Inc." to the following:

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